

## § 960.2

(4) Promote the broad use of remote sensing data, their information products and applications;

(5) Ensure that unenhanced data collected by licensed private remote sensing space systems concerning the territory of any country are made available to the government of that country upon its request, as soon as such data are available and on reasonable commercial terms and conditions as appropriate;

(6) Ensure that remotely sensed data are widely available for civil and scientific research, particularly environmental and global change research; and

(7) Maintain a permanent comprehensive U.S. government archive of global land remote sensing data for long-term monitoring and study of the changing global environment.

(b) In accordance with the Act and applicable U.S. Policy, decisions regarding the issuance of licenses and operational conditions (See Subpart B of this part) will be made by the Secretary of Commerce or his/her designee. Determinations of conditions necessary to meet national security, foreign policy and international obligations are made by the Secretaries of Defense and State, respectively.

(c) In accordance with U.S. Policy, NOAA encourages U.S. companies to build and operate commercial remote sensing space systems whose operational capabilities, products, and services are superior to any current or planned foreign commercial systems. However, because of the potential value of its products to an adversary, the U.S. Government may restrict operations of the commercial systems in order to limit collection and/or dissemination of certain data and products to the U.S. Government or to U.S. Government-approved recipients.

### § 960.2 Scope.

(a) The Act and the regulations in this part apply to any person subject to the jurisdiction or control of the United States who operates or proposes to operate a private remote sensing space system, either directly or through an affiliate or subsidiary, and/or establishes substantial connections with the United States regarding the

## 15 CFR Ch. IX (1–1–17 Edition)

operation of a private remote sensing system.

(b) In determining whether substantial connections exist with regard to a specific system, the factors NOAA may consider include, but are not limited to: the location of a system control center or operations centers and stations; the administrative control of the system; use of a U.S. launch vehicle; location or administrative control of ground receiving stations; the investment, ownership, or technology included in the system.

(c) The regulations in this part apply to any action taken on or after May 25, 2006 with respect to any license, and to pre-existing licenses.

(d) If any provision of the regulations in this part or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the regulations in this part or the application of such provision to other persons and circumstances shall not be affected.

(e) Issuance of a license under the regulations in this part does not affect the authority of any Department or Agency of the U.S. Government including, but not limited to, the Federal Communications Commission under the Communications Act of 1934 (47 U.S.C. 151 *et seq.*), the Department of Transportation under the Commercial Space Launch Act of 1984 (49 U.S.C. app. 2601 *et seq.*), the Department of Commerce under the Export Administration Regulations (15 CFR parts 730–774), or the Department of State under the Arms Export Control Act (22 U.S.C. 2778) and the International Traffic in Arms Regulations (22 CFR parts 120–130).

### § 960.3 Definitions.

For purposes of the regulations in this part, the following terms have the following meanings:

*Act* means the Land Remote Sensing Policy Act of 1992 (Pub. L. 102–555, 106 Stat. 4163) as amended by the 1998 Commercial Space Act (Pub. L. 105–303, 112 Stat. 2846), 15 U.S.C. 5601 *et seq.*

*Administrative control* means the power or authority, direct or indirect, whether or not exercised through the

legal or defacto ownership or possession thereof, ownership of voting securities of a licensee, or by proxy voting, contractual arrangements or other means, to determine, direct or decide matters affecting the operations of the system; specifically, to determine, direct, take, manage, administer, influence, reach, or cause decisions regarding the:

- (1) Sale, lease, mortgage pledge, or other transfer of any or all of the system or system control assets of the licensee, whether in the ordinary course of business or not;
- (2) Operation of the system(s), including but not limited to orbit maintenance and other housekeeping functions, tasking and tasking prioritization, data acquisition, data storage, data transmission, processing and dissemination;
- (3) Dissolution of the licensee;
- (4) Closing and/or relocation of the command and control center of the system;
- (5) Execution, substantive modification and/or termination or non-fulfillment of any significant or substantial foreign agreement of the licensee regarding direct readout or tasking obligations; or
- (6) Amendment of the Articles of Incorporation or constituent agreement of the licensee with respect to the matters described in paragraphs (1) through (4) of this definition.

*Administrator* means the Administrator of NOAA and Under Secretary of Commerce for Oceans and Atmosphere or his/her designee.

*Affiliate* means any person:

- (1) Which owns or controls more than a 5% interest in the applicant or licensee; or
- (2) Which is under common ownership or control with the applicant or licensee.

*Applicant* means a person who has submitted an application for a NOAA license to operate a remote sensing space system.

*Assistant Administrator* means the Assistant Administrator of NOAA for Satellite and Information Services or his/her designee.

*Authorized Officer* means an individual designated by the Secretary of

Commerce or his/her designee to enforce the regulations in this part.

*Basic data set* means those unenhanced data generated by the Landsat system or by any remote sensing space system licensed under the Act that have been selected by the Secretary of the Interior to be maintained in the National Satellite Land Remote Sensing Data Archive, as described in Section 502(c) of the Act.

*Beneficial owner* means any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise, has or shares: The right to exercise administrative control over a licensee; and the power to dispose of or to direct the disposition of, any security interest in a license. All securities of the same class beneficially owned by a person, regardless of the form which such beneficial ownership takes, shall be aggregated in calculating the number of shares beneficially owned by such person. A person shall be deemed to be the beneficial owner of a security interest if that person has the right to acquire beneficial ownership, as defined in this definition, within sixty (60) days from acquiring that interest, including, but not limited to, any right to acquire beneficial ownership through: The exercise of any option, warrant or right; the conversion of a security; the power to revoke a trust, discretionary account, or similar arrangement; or the automatic termination of a trust, discretionary account or similar arrangement.

*Data Protection Plan* refers to the licensee's plan to protect data and information through the entire cycle of tasking, operations, processing, archiving and dissemination. At a minimum, this includes appropriate protection of communications links and/or delivery methods for tasking of the satellite, downlinking of data to a ground station (including relay stations), and delivery of data from the satellite to the licensee's central data storage facilities.

*License* means a grant of authority under the Act by the Administrator to a person to operate a private remote-sensing space system.

*Licensee* means a person who holds a NOAA license to operate a remote sensing space system.

*National Satellite Land Remote Sensing Data Archive* means the archive established by the Secretary of the Interior pursuant to the archival responsibilities defined in Section 502 of the Act.

*NOAA* means the National Oceanic and Atmospheric Administration.

*Operate* means to manage, run, authorize, control, or otherwise affect the functioning of a remote sensing space system, directly or through an affiliate or subsidiary. This includes:

(1) Commanding, controlling, tasking, and navigation of the system; or

(2) Data acquisition, storage, processing, and dissemination.

*Operational control* means the ability to operate the system or override commands issued by any operations center or station.

*Orbital debris* means all human-generated debris in Earth orbit. This includes, but is not limited to, payloads that can no longer perform their mission, rocket bodies and other hardware (e.g., bolt fragments and covers) left in orbit as a result of normal launch and operational activities, and fragmentation debris produced by failure or collision. Gases and liquids in free state are not considered orbital debris.

*Person* means any individual (whether or not a citizen of the United States) subject to U.S. jurisdiction; a corporation, partnership, association, or other entity organized or existing under the laws of the United States; a subsidiary (foreign or domestic) of a U.S. parent company; an affiliate (foreign or domestic) of a U.S. company; or any other private remote sensing space system operator having substantial connections with the United States or deriving substantial benefits from the United States that support its international remote sensing operations sufficient to assert U.S. jurisdiction as a matter of common law.

*Proprietary information* means any business or trade secrets or commercial or financial information explicitly designated as proprietary or confidential by the submitter, the public release of which would cause substantial harm to

the competitive position of the submitter. Once the information is publicly-released by the submitter, it is no longer considered proprietary.

*Remote sensing space system, Licensed system, or System* means any device, instrument, or combination thereof, the space-borne platform upon which it is carried, and any related facilities capable of actively or passively sensing the Earth's surface, including bodies of water, from space by making use of the properties of the electromagnetic waves emitted, reflected, or diffracted by the sensed objects. For purposes of the regulations in this part, a licensed system consists of a finite number of satellites and associated facilities, including those for tasking, receiving, and storing data, designated at the time of the license application. Small, hand-held cameras shall not be considered remote sensing space systems.

*Secretary* means the Secretary of Commerce.

*Security* means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral trust certificate, pre-organization certificate or subscription, transferable share, investment contract, voting trust certificate, or certificate of deposit for a security; any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof); any put, call, straddle, option, or privilege entered into a national securities exchange relating to foreign currency; any interest or instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

*Significant or Substantial foreign agreement* (also referred to in this part as foreign agreement or agreement) means an agreement with a foreign nation, entity, consortium, or person that provides for one or more of the following:

(1) Administrative control which may include distributorship arrangements involving the routine receipt of high

volumes of the system's unenhanced data;

(2) Participation in the operations of the system; including direct access to the system's unenhanced data; or

(3) An equity interest in the licensee held by a foreign nation and/or person, if such interest equals or exceeds or will equal or exceed twenty (20) percent of total outstanding shares, or entitles the foreign person to a position on the licensee's Board of Directors.

*Subsidiary* means a person over which the applicant or licensee may exercise administrative control.

*Tasking* means any action taken to command a remote sensing space system or its sensor to acquire data for transmission or storage on the satellite's recording subsystem. Such action can be in the form of commands sent to the system for execution or for storage in the satellite's memory for execution at a specified time or location within a given orbit.

*Under Secretary* means the Under Secretary of Commerce for Oceans and Atmosphere and Administrator of NOAA or his/her designee.

*Unenhanced data* means remote sensing signals or imagery products that are unprocessed or subject only to data preprocessing. Data preprocessing may include rectification of system and sensor distortions in remote sensing data as it is received directly from the satellite; registration of such data with respect to features of the Earth; and calibration of spectral response with respect to such data. It does not include conclusions, manipulations, or calculations derived from such data, or a combination of such data with other data. It also excludes phase history data for synthetic aperture radar systems or other space-based radar systems.

*U.S. Policy* means the policy(ies) announced by the President that specifically address U.S. commercial remote sensing space capabilities.

## Subpart B—Licenses

### § 960.4 Application.

No person subject to the jurisdiction and/or control of the United States may operate a private remote sensing

space system without a license issued pursuant to this part.

(a) Filing instructions, as well as a list of information to be included in the license application, are included in Appendix 1 of this part.

(b) If information in an application becomes inaccurate or incomplete prior to issuance of the license, the applicant must, within 14 days, file the new or corrected information with the Assistant Administrator. If new or revised information is filed during the application process, the Assistant Administrator shall, within fourteen (14) days, determine whether the deadline imposed by Section 201(c) of the Act and § 960.6(a) must be extended to allow adequate review of the revised application and, if so, for how long.

### § 960.5 Confidentiality of information.

(a) Any proprietary information related to a license application, application for amendment, foreign agreement, or any other supporting documentation submitted to NOAA will be treated as business confidential or proprietary information, if that information is explicitly designated and marked as such by the submitter. This does not preclude the United States Government from citing information in the public domain provided by the licensee in another venue (e.g., the licensee's Web site or a press release).

(b) Within thirty (30) days of the issuance of a license to operate a remote sensing space system, the licensee shall provide the Assistant Administrator with a publicly-releasable summary of the licensed system. The summary must be submitted in a readily reproducible form accompanied by a copy on electronic media. This summary shall be available for public review at a location designated by the Assistant Administrator and shall include:

(1) The name, mailing address and telephone number of the licensee and any affiliates or subsidiaries;

(2) A general description of the system, its orbit(s) and the type of data to be acquired; and

(3) The name and address upon whom service of all documents may be made.